IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6932 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge ?

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Rakesh alias Rako Balubhai Thakkar : Petitioner.

Versus

The Commissioner of Police Ahmedabad and others. : Respondents.

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Appearance

Shri Anil S. Dave/Banna S. Dutta, Advocates for the petitioners.

Shri S.P.Dave, AGP for the respondents.

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Coram: H.R. Shelat, J.

(1-12-1997)

ORAL JUDGMENT

By this application under Article 226 of the

Constitution of India,the petitioner calls in question the legality and validity of the detention order, passed by the Police Commissioner of Ahmedabad city on 5th July 1997, invoking the powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act').

2. On the basis of the several information the police was receiving there was a reason to believe that the petitioner is a head-strong person, or a hector, or a yahoo or a vagrant and was terrorising the people for committing his self-willed acts. When the Police Commissioner of the City of Ahmedabad inquired deeply he could note that either with Bapunagar police station or Naroda police station about 8 complaints were registered against the petitioner and all the complaints were relating to the offences punishable under Section 457, 380 read with Section 114 of the Indian Penal Code. The Police Commissioner, therefore thought it fit to have further inquisition, and after the piercing inquiry he found that the petiitoner was the head-strong person and was by his nefarious activities creating panic in the society challenging the maintenance of public order. The petitioner used to extort money by giving threats or resorting to coercive measures, and those who did not yield to his desire they were assaulted & beaten brutally and were then made to succumb to his self-willed desire & whims. The people worrying about their safety were not coming forth to lodge complaints and have the actions in accordance with law. Hearing about the petitioner or seeing him the people used to chevy, as they were feeling insecured. The Police Commissioner then found that to curb horrifying anti-social activities of the petitioner there was no way out but to detain him as under general law it was difficult to control his activities taking appropriate action. He therefore passed the order in question on 5th July,1997. Consequent upon the same the petitioner came to be arrested.

3. The petitioner has challenged the legality and validity of the order on different grounds. According to him, there is no justification to describe him as a head-strong person or a dangerous person. Necessary bail papers were not given to him for making effective representation though the co-accused were released on bail. After he was released on bail by the court, the detention order was passed, and it was only with a view to see that he was put behind bars any how. The order passed is therefore malafide. Further, assailing the order it is submitted that the particulars about the witnesses giving the statement against him ought to have

been furnished to him so as to make effective representation. There was no justification to suppress the same, because for the same the requirements of Section 9(2) of the Act were not satisfied. He has thus assailed on the ground of non-supply of better particulars also.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has been made are required to be communicated to the detenu and further an opportunity of making the representation against the order of detention is required to be given. The detenu is therefore required to be informed not merely factual inference and factual materials which led to inference namely not to disclose the certain facts, but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sourses would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act the detaining authority is empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has be exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statements against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry or study the case personally applying his mind. What can be deduced from such constitutional as well as legal scheme is that the obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has therefore to apply his mind and should itself be

satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. He can entrusts the task of inquiry to any one else found fit for the purpose but in that case also he has to take decision only after application of mind to all the facts & circumstances on record. If he mechanically endorses or accepts the recommendation that person or officer in that behalf, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

5. Keeping such law in mind when the merits of the order qua the contention raised are dissected, I see no justification to maintain the order. In the order itself the authority passing the order has stated that the task of inquiry for the exercise of discretion under Section 9(2) of the Act was assigned to his subordinate. He received the report from his subordinate who has formed a particular opinion, and it seems accepting the opinion mechanically the authority passing the order thought it fit to exercise the privilege and withdraw the particulars of the witnesses so as to keep the identity of the witnesses wrapped. When he has not personally inquired and satisfied whether the doubt expressed by the witnesses was honest, genuine, and reasonable, and not imaginary and fanciful or an empty excuse the exercise of privilege cannot be said to be just. When it appears that there was no necessity to suppress the facts withheld from the petitioner, and the privilege exercised is not in consonance with the law, the authority passing the order was under obligation to furnish those particulars not supplied to the petitioner. When the particulars are not supplied the right to make effective representation is marred and therefore the continued

detention cannot be upheld, but must be held to be illegal and void. The order of detention, therefore, is required to be quashed.

6. With the result, the petition is allowed and the order detaining the petitioner is held unconstitutional & illegal. It is therefore quashed. The petitioner be released forthwith if no longer required in any other case. Rule accordingly made absolute.

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